

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

Richard J. Chapman,	:	
Plaintiff-Appellant,	:	
v.	:	No. 11AP-268
	:	(C.C. No. 2010-11871)
Ohio Department of Youth Services,	:	
Defendant-Appellee.	:	(REGULAR CALENDAR)

D E C I S I O N

Rendered on September 27, 2011

Blaugrund, Herbert, Kessler, Miller, Myers & Postalakis, Incorporated, Marc E. Myers and J. Shawn Busken, for appellant.

Mike DeWine, Attorney General, and Velda K. Hofacker, for appellee.

APPEAL from the Ohio Court of Claims

TYACK, J.

{¶1} Richard J. Chapman is appealing from the dismissal of his case filed in the Ohio Court of Claims. He assigns two errors for our consideration:

[1.] The Court of Claims erred in its application of the economic loss doctrine to the instant case.

[II.] The Court of Claims erred in its analysis of *Stotts v. Ohio Department of Transportation* and improperly concluded that case was distinguishable from the instant case.

{¶2} Chapman was an employee of the Ohio Department of Youth Services when his job was abolished. Instead of losing all his employment, he was allowed to transfer to a different position at Circleville Juvenile Correctional Facility by exercising his so-called bumping rights. He contested the transfer with the State Personnel Board of Review ("SPBR"), which determined that he should have been allowed to transfer instead to Scioto Juvenile Correctional Facility, which was closer to his former job site.

{¶3} After SPBR ruled in his case, Chapman filed suit in the Ohio Court of Claims seeking compensation for the additional time and distance involved in his daily commute to the Circleville facility.

{¶4} The Ohio Court of Claims dismissed his lawsuit, which resulted in this appeal.

{¶5} The complaint filed on behalf of Chapman in the Ohio Court of Claims has a single claim—one in negligence. Negligence requires a duty of care and a breach of that duty resulting in injury and damages.

{¶6} The injury cannot be merely an economic loss. The Supreme Court of Ohio stated, in *Chemtrol Adhesives, Inc. v. American Mfrs. Mut. Ins. Co.* (1989), 42 Ohio St.3d 40, in the context of commercial transactions that "in the absence of injury to persons or damage to other property, the commercial buyer may not recover for economic losses premised on tort theories of strict liability or negligence." *Id.* at

paragraph two of the syllabus. More specifically yet, the *Chemtrol Adhesives'* case addressed products liability cases and litigation related to such cases.

{¶7} We are not inclined to extend the *Chemtrol Adhesives'* case into a blanket ruling on all cases involving economic loss.

{¶8} However, we also are not inclined to find that transfers which are disaffirmed by the SPBR were automatically somehow negligent, making the State of Ohio liable under a tort theory. Instead, the relationship between the State of Ohio and its employees is governed by statute and by principles of contract law. If liability is to be established, it needs to be found in violation of a statute or a contract provision.

{¶9} In Chapman's case, the State of Ohio transferred a woman into the opening in Delaware, Ohio. The woman had less seniority than Chapman, so Chapman was found by the SPBR to have had the first opportunity to take the Delaware spot with no other factors being considered. The failure to give the most senior employee the first choice is not a violation of a duty of care for purposes of tort law.

{¶10} We do not specifically address the issue of whether the Ohio Court of Claims reached the correct result in *Stotts v. Ohio Dept. of Transp.* (1987), 31 Ohio Misc.2d 7. That case, decided some 24 years ago, involved different facts, especially facts involving a transfer of a state employee instead of the exercise of bumping rights.

{¶11} The Ohio Court of Claims reached the correct result. We, therefore, overrule both assignments of error and affirm the judgment of the Ohio Court of Claims.

Judgment affirmed.

BROWN and DORRIAN, JJ., concur.
